

EXHIBIT F

Johnson City Energy Authority (Brightridge)

vs.

United Telephone Southeast

Deposition of:

Andrew Chong

December 01, 2022

Vol 01

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Andrew Chong
December 01, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE, TENNESSEE

CASE NO.: 2:20-cv-00030

JOHNSON CITY ENERGY AUTHORITY,
D/B/A BRIGHTRIDGE,

Plaintiff and Counter-Defendant,

vs.

UNITED TELEPHONE SOUTHEAST, LLC,
D/B/A CENTURYLINK,

Defendant and Counter-Plaintiff.

/

DEPOSITION OF

ANDREW CHONG

Pages 1 through 195

Thursday, December 1, 2022
9:28 a.m. - 3:21 p.m.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
200 South Orange Avenue, Suite 2900
Orlando, Florida 32801

Stenographically Reported By:
Alison Hawk, RPR

Job No.: 285861

Andrew Chong
December 01, 2022

		Page 2			Page 4
1	APPEARANCES:		1	I N D E X	
2	On behalf of Plaintiff:		2	(Continued)	
3	Hunter, Smith & Davis, LLP		15	Bates BR000389-000391 Make Ready -	159
4	100 Med Tech Parkway, Suite 110		16	12-21-2018	
5	Johnson City, Tennessee 37604		17	Bates BR000392-BR000400 12-21-18	164
6	423-283-6300		18	Transfer Request	
7	BY: Stephen M. Darden, Esquire		19	Bates BR000415-BR000416; BR000429	166
8	sdarden@hsdlaw.com		20	Make Ready - 02-19-2019	
9	On behalf of Defendant:		21	Bates BR000417-BR000427 Transfer	169
10	Baker Donelson		22	Request - 02-20-2019	
11	602 Sevier Street, Suite 300		23	Bates BR000430-BR000443 Transfer	169
12	Johnson City, Tennessee 37604		24	Request - 02-20-2019	
13	423-928-0181		25	Bates BR000000142-BR00000143	170
14	BY: Gary L. Edwards, II, Esquire			03-01-2019 Letter to Andrew Ice	
15	gedwards@bakerdonelson.com				
16	ALSO PRESENT VIA ZOOM: William Bovender, BrightRidge				
17	Joseph Harvey, BrightRidge				
18	Jeff Dykes, BrightRidge				
19					
20					
21					
22					
23					
24					
25					
		Page 3			Page 5
1	I N D E X		1	The following proceedings began at 9:28 a.m.:	
2	Testimony of ANDREW CHONG		2	STENOGRAPHER: Please raise your right	
3	Direct Examination By Mr. Darden	5	3	hand.	
4	Certificate of Oath	194	4	Do you swear or affirm the testimony you	
5	Certificate of Reporter	195	5	are about to give will be the truth, the whole	
6	EXHIBITS		6	truth, and nothing but the truth?	
7	EXHIBIT DESCRIPTION	PAGE	7	THE WITNESS: Yes.	
8	1 1980 Agreement	116	8	ANDREW CHONG,	
9	2 Amendment No. One	133	9	having been first duly sworn or affirmed, as	
10	3 Amendment No. Two	133	10	hereinafter certified, testified as follows:	
11	4 Amendment No. Three	133	11	DIRECT EXAMINATION	
12	5 Amendment No. Four	133	12	BY MR. DARREN:	
13	6 Amendment No. Five	133	13	Q Good morning, again, Mr. Chong. As you	
14	7 Bates BR00000012-BR00000013 and	71	14	know, my name is Steve Darden. I am one of the	
15	BR000000413 - BR000000414 Email Chain		15	attorneys representing BrightRidge in the lawsuit	
16	Re: Joint Use Make-Ready Discussions		16	with CenturyLink. You know from our preliminaries	
17	8 Bates BR00000003-BR00000005 Email	82	17	just, sort of, the conversations in advance.	
18	Chain		18	Mr. Edwards and I know each other. We practice	
19	9 Bates BR00000040-BR00000041 November	90	19	law in the same town. Here we are in Orlando,	
20	26, 2018, Letter from S. Evans		20	Florida, to take your deposition, correct?	
21	10 Bates BR00000347-BR00000360	100	21	A Correct.	
22	Make-Ready Requests		22	Q Are you doing okay today?	
23	11 Bates BR00000457 12-18-2018 Letter to	187	23	A Yes, sir.	
24	Andrew Ice from Stacy Evans		24	Q All right. Would you please state your	
25	12 Bates BR000446-BR000453 Transfer	153	25	full name for the record?	
	Request - 12-21-2018				
	13 Bates BR000444-BR000445 Make Ready -	156			
	12-21-2018				
	14 Bates BR000455-BR000462 Transfer	157			
	Request - 12-21-2018				

<p style="text-align: right;">Page 66</p> <p>1 Q Do you have any idea when the company that 2 used to be known as United Inter-Mountain Telephone 3 Company began offering bright -- Internet service of 4 any nature?</p> <p>5 A I don't know the timing on it.</p> <p>6 Q So you wouldn't know when it went from 7 copper to dial-up or any other technology that 8 required a different type of plant, correct?</p> <p>9 A Correct.</p> <p>10 Q Do you know when my client began being 11 known as the Johnson City Energy Authority?</p> <p>12 A No.</p> <p>13 Q So you don't know when it began providing 14 Internet service, correct?</p> <p>15 A Correct.</p> <p>16 Q Are you aware of other companies in the 17 northeast Tennessee area who have attached their 18 Internet lines in the 4-foot telephone zone?</p> <p>19 A No.</p> <p>20 Q So if I told you that a company known as 21 BTES did so, would that be information that you 22 didn't previously have?</p> <p>23 A That's correct.</p> <p>24 Q If I told you the company known as BVU did 25 so, would that also be information that you didn't</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Okay. And how about the make-ready 2 procedures and requirements for attachments?</p> <p>3 A Can you repeat that?</p> <p>4 Q Do you know -- do you have information 5 about the make-ready procedures and requirements for 6 attachments in the telephone zone of poles owned by 7 Brightspeed in the BrightRidge territory?</p> <p>8 A I'm not sure I'm interpreting your 9 question properly, so can you rephrase?</p> <p>10 Q Okay. Sure. Regarding the make-ready 11 procedures -- let's just talk about that. 12 Regarding the make-ready procedures in the 13 BrightRidge territory.</p> <p>14 A Okay.</p> <p>15 Q Okay. I'm talking about poles owned by 16 Brightspeed.</p> <p>17 A Okay.</p> <p>18 Q Do you know what those make-ready 19 procedures are there?</p> <p>20 A Oh, okay. So they would need to apply 21 to -- through the inbound program to Brightspeed for 22 permission to attach in the communications space.</p> <p>23 Q Very good. And do you know who the 24 vendors are who perform the make-ready tasks?</p> <p>25 A Make-ready engineering or make-ready</p>
<p style="text-align: right;">Page 67</p> <p>1 previously have?</p> <p>2 A Correct.</p> <p>3 Q Do you know -- are you familiar with the 4 history of and the current pricing for fees charged 5 for attachments in the 4-foot telephone zone on 6 BrightRidge-owned poles?</p> <p>7 A I have no idea.</p> <p>8 Q Do you know what your company charges for 9 attachment rates?</p> <p>10 A No.</p> <p>11 Q Do you know the history of those rates?</p> <p>12 A No.</p> <p>13 Q So if you were called on to testify about 14 those things at trial, you'd have to learn them 15 between now and the trial, correct?</p> <p>16 A Correct.</p> <p>17 Q Do you have information about the specific 18 make-ready procedures and requirements for 19 attachments in the telephone zone of poles owned by 20 BrightRidge -- owned by -- excuse me, Brightspeed in 21 the BrightRidge territory, as well as the make-ready 22 costs that are to be paid by BrightRidge?</p> <p>23 A Make-ready costs, no, it's on a 24 case-by-case basis. Our vendor will provide that -- 25 the costs.</p>	<p style="text-align: right;">Page 69</p> <p>1 construction?</p> <p>2 Q I'm talking about the contractors who 3 work -- who actually do the rearranging on the 4 poles?</p> <p>5 A Okay. That's make-ready construction.</p> <p>6 Q Construction, thank you.</p> <p>7 A In the Tennessee area, I would have to see 8 who is the current contractor in that area.</p> <p>9 Q Okay. Can you name one?</p> <p>10 A We have Lamberts we use, I think Star is 11 another one. I know Lamberts is all of North 12 Carolina. I don't know who is the contractor for 13 Tennessee.</p> <p>14 Q Okay. Are you in the position to offer an 15 opinion or testimony about damages that your company 16 has incurred?</p> <p>17 A No.</p> <p>18 Q Do you know anything about NESC 19 requirements for attachments in the telephone zone 20 of poles owned by Brightspeed in the BrightRidge 21 territory?</p> <p>22 A Yes.</p> <p>23 Q What do you know?</p> <p>24 A That NESC, I think, is 32 ruling, and I 25 refer to my cheat sheet every time, and I have to,</p>

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<p style="text-align: right;">Page 142</p> <p>1 A Yes. 2 Q Okay. Now, who typed that? 3 A Donald. 4 Q Okay. Now, he's talking about a situation 5 involving Las Vegas, Nevada power, right? 6 A Yes. 7 Q And then it says, after the first 8 paragraph, it says, "Oregon, Tom went to court." 9 Now, is there something missing in that white space 10 above that sentence? 11 Do you see what I'm talking about? 12 A Yeah. Nothing is missing. "Oregon, Tom 13 went to court." Tom was the manager before Brian 14 Sikes. 15 Q Okay. And what's Tom's last name? 16 A McGowan. He no longer works for 17 CenturyLink. 18 Q Tom McGowan? 19 A Yeah. 20 Q It says, "Tom went to court," et cetera, 21 et cetera. And the next to last sentence says 22 something that I'm wondering if you have any 23 perspective on. It says, "Having the fiber in the 24 com space tells me they may be looking to rent it 25 out."</p>	<p style="text-align: right;">Page 144</p> <p>1 agreements in the same manner? 2 MR. EDWARDS: Objection; hypothetical, 3 calls for opinion. 4 A I would say no. Each agreement is between 5 two parties and it's -- it has to stay between those 6 two parties. 7 BY MR. DARDEN: 8 Q But if the language were the same, would 9 you treat one joint use partner one way and another 10 joint use partner differently? 11 MR. EDWARDS: And my objection is 12 continuing. 13 A I would say no because that's giving 14 preferential treatment. Everybody is treated the 15 same way. 16 BY MR. DARDEN: 17 Q Okay. You're applying the language 18 identically? 19 A Yes. 20 Q All right. Are you familiar with an 21 agreement that CenturyLink had with a company known 22 as BVU? 23 A No. 24 Q Have you ever seen the joint use pole 25 agreement between BVU and CenturyLink?</p>
<p style="text-align: right;">Page 143</p> <p>1 "Having the fiber in the com space tells 2 me they may be looking to rent it out." What's 3 being alluded to there? Do you have any idea? 4 A No, that's Donny's opinion. I think what 5 he's saying is that if the fiber is in the com 6 space, then whoever is placing that fiber is going 7 to lease it out to another company like Comcast or 8 Charter or whoever, to lease the fibers, the dark 9 fibers. 10 Q Okay. Or you think that's what he means? 11 A I think that's what he means. 12 Q Well, assuming that is what he means, 13 what's the significance of that, how does that 14 matter with regard to the interpretation of the 1980 15 joint use pole agreement? 16 A I don't know if it has any bearing on the 17 joint use of the 1980 agreement. 18 Q Okay. So, Mr. Chong, if CenturyLink had 19 two identically situated parties and both were 20 parties to joint use agreements that had the same 21 provisions, okay, different joint use pole 22 agreements, but they're the same language. 23 Do you follow me? 24 A Okay. 25 Q Would CenturyLink apply those joint use</p>	<p style="text-align: right;">Page 145</p> <p>1 A No. 2 Q All right. Well, let me cure that. I'm 3 going to hand you Exhibit 24. 4 (Exhibit 24 identified for the record.) 5 BY MR. DARDEN: 6 Q All right. So I've just handed you 7 Exhibit 24, sir, which, if you look at the top, 8 indicates that it is a joint use pole agreement 9 entered into in 1980 between the Bristol Virginia 10 Utilities Board and United Inter-Mountain Telephone 11 Company? 12 A Correct. 13 Q Now, have you ever seen this before? 14 A This agreement? 15 Q Yes. 16 A No. 17 Q Does it look to be the same as the 18 agreement entered into at the same time between 19 Johnson City Power Board and United Inter-Mountain 20 Telephone company? 21 MR. EDWARDS: I would object, and instruct 22 not to answer for reasons previously discussed prior to the deposition and emails. We would 23 also add the objection there is no foundation 24 with this witness related to this agreement.</p>

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<p>1 the parties' agreements, and he says it's not 2 relevant. So my question to you -- do you see that, 3 first of all?</p> <p>4 A Yes, yes.</p> <p>5 Q So my question to you, sir, is: You've 6 had a chance to review Exhibit 1 multiple times 7 today, and you've done so multiple times today.</p> <p>8 Do you recall seeing the phrase 9 "fundamental change" in the 1980 agreement?</p> <p>10 A No.</p> <p>11 Q Do you recall seeing the phrase 12 "incremental change" in the 1980 agreement?</p> <p>13 A No.</p> <p>14 Q To your knowledge, do either phrases 15 appear, "fundamental change" or "incremental 16 change"?</p> <p>17 A No.</p> <p>18 Q So that's something that someone has come 19 up with apart from or external to the agreement 20 itself, right?</p> <p>21 A Okay.</p> <p>22 Q And by saying "okay," you're saying you 23 agree with that?</p> <p>24 A Yes. But there's a difference between the 25 two words, right, incremental and fundamental.</p>	<p>Page 190</p> <p>1 BY MR. DARDEN:</p> <p>2 Q What do you understand that means? I 3 would suggest to you what your lawyers are saying, 4 when they crafted this answer, is you look at the 5 language and the wording that's inside that 1980 6 agreement.</p> <p>7 A All of it as a whole, yes.</p> <p>8 Q All of it as a whole. Which means 9 incremental change, fundamental change, rental, 10 electric company rental space, telephone company 11 rental space, since they're not within the four 12 corners of that agreement, it's not to be relied 13 upon, right?</p> <p>14 A That's not my opinion. That's nothing for 15 me to decide or call on. The Court will decide what 16 it is.</p> <p>17 Q Well, if the Court is looking to the 18 wording of the agreement only, then those words and 19 phrases that don't appear in the agreement won't 20 carry the day, right?</p> <p>21 A I don't have an opinion on that, I don't 22 know.</p> <p>23 MR. DARDEN: I tell you what, I think I'm 24 done, but I need just a couple minutes to think 25 about that.</p>
<p>1 Q Right, but neither one of them appear in 2 the 1980 agreement?</p> <p>3 A Correct.</p> <p>4 Q And back to art -- Exhibit 29, sir, 5 Paragraph 18, four lines down, it says "In 6 construing that agreement" -- and that means the 7 1980 agreement, right?</p> <p>8 A Yeah.</p> <p>9 Q The Court is constrained to looking within 10 the four corners of the 1980 agreement as amended as 11 a whole, right?</p> <p>12 A Correct.</p> <p>13 Q And when the Court does that, it will not 14 entertain the word "rental" if it sticks to that, 15 right?</p> <p>16 MR. EDWARDS: Objection; foundation, calls 17 for speculation.</p> <p>18 BY MR. DARDEN:</p> <p>19 Q Well, what do you understand "four corners 20 of the agreement" means?</p> <p>21 MR. EDWARDS: I'm going to make a 22 continuing objection, seeks into legal 23 conclusion stuff.</p> <p>24 MR. DARDEN: That's fine.</p>	<p>Page 191</p> <p>1 (Recess held from 3:18 p.m. to 3:20 p.m.)</p> <p>2 MR. DARDEN: Ms. Hawk, thank you for your 3 service today. That will conclude my 4 questioning.</p> <p>5 Mr. Chong, thank you for your presence 6 today, and I wish you and your family happy 7 holidays.</p> <p>8 THE WITNESS: Thank you. Same to you.</p> <p>9 MR. DARDEN: Thank you.</p> <p>10 STENOGRAFHER: Do you want to order the 11 transcript at this time?</p> <p>12 MR. DARDEN: Yes, please.</p> <p>13 STENOGRAFHER: Are you going to get a 14 copy?</p> <p>15 MR. EDWARDS: Yes, I'll take a copy.</p> <p>16 (Proceedings concluded at 3:21 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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